IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO : 24175 of 2004

Between:

N. Jagga Reddy, S/o. Malla Reddy,
R/o. Manthani Village & Mandal, karimnagar District.

..... PETITIONER

AND

1. The District Collector, Karimnagar District.
2. The District Panchayat Officer, ' Karimangar District.
3. The Dy. Conservator-cum-forest Officer -cum-

Divisional- Officer, Wiled Life Management,
Jinnaram, Karimnagar District.

…..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to Issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus; 1) declaring the orders of the Respondent No.1 in proceeding No.A2/2903/98-Pts., dated 23.11.2004, as arbitrary illegal, violative of Article 14, 21 &

300A of the constitution of India and consequently set aside the same; ii) direct the respondent authorities to accept the lease amount from the petitioner as per the proceedings Roc. No. A2/2903/1998-Pts., dated 26.8.2004 of the Respondent No.1.

Counsel for the Petitioner: MR.A.SUDERSHAN REDDY

Counsel for the Respondents 1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3 G for Forest

The Court made the following:

ORAL ORDER:

Petitioner, who figured as the highest bidder for quarrying of sand in Godavari River at Manthini for 2002-2003 and 2004-2005, entered into a lease agreement as per the terms of which he has to pay 10% of the rent fixed for the first year's, in addition to the rent fixed for the first year as rental for the second year. After the first year of lease was coming to an end, consequent on the notice to pay the advance rent at 10% increase on first year's lease amount, he made a request the authorities to extend the first year's lease period by three months on the ground that he could not quarry sand for three months due to Godavari Pushkaram. The authorities informed him that they would consider that request after the end of second period. Questioning the action of the respondents in not extending period of lease by three months and their insistence on payment of 50% the enhanced rate of

rent for the second year lease period, petitioner filed W.P.No.1601 of 2004, which was dismissed by a learned single Judge on 13.09.2004. Writ Appeal filed by the petitioner in W.A.No.1516 of 2004 also was dismissed, granting him two weeks time from 11.10.2004 for payment of advance lease amount (for the second year) to the authorities as per the terms of the lease. In the meanwhile, petitioner received a communication dated 23.11.2004 that in view of the fact that the area leased out to him is found to be a part of the Reserve Forest and since Deputy Conservator and Divisional Forest Officer through his letter dated 08.09.2004, stated that the said area is covered by Wild Life (Crocodile) Sanctuary, the lease granted to him is in violation of provisions of Wild Life Protection Act, 1972 (the Act) and so the lease cannot either be extended by three months or renewed for the second year. Questioning the said communication refusing extension and renewal of the lease the petitioner filed this petition.

2. The main contention of the learned counsel for the petitioner is that as per the terms of the contract petitioner is entitled to quarry sand till 05.02.2005 and since he was prevented from quarrying operations for three months during pushkarams petitioner is entitled to extension of lease by three months, and though petitioner is ready and willing to pay the amounts as per the agreement since respondents are refusing to receive the said amounts and are not permitting the petitioner to quarry sand, respondents may be directed to renew the lease after receiving the amount from the petitioner as per the agreement and may also be directed to extend the period of lease by three months, more so because the lease was granted by respondents knowing that the area is in reserve forest. The contention of the learned Government Pleader is that in view of the fact that the area let out to the petitioner is discovered to be falling within the reserve forest area, and that it is also within the wildlife (Crocodile) Sanctuary petitioner is not entitled to the reliefs sought.

3. It is no doubt true the communication dated 08.09.2004 addressed to the first respondent by the Deputy Conservator of Forest and Divisional Forest Officer, filed with the Counter affidavit, shows that the notification constituting the Wildlife (Crocodile) Sanctuary was made in1978, long prior to the grant of the lease in favour of the petitioner, and petitioner was permitted to quarry sand for the first year. But that fact cannot be a ground for granting the relief sought by the petitioner for the following reasons.

4. Letter dated 08.09.2004 referred to in para 3 above shows that vide G.O.Ms.No.364, Forest and R&D (For.III) dated 20.05.1978 issued under Section 28 of the Act total area of 29.81 Sq.kms or 2981.68 Ha, which includes the area leased out to the petitioner, was notified on Siwaram (Crocodile)Wildlife Sanctuary. As per Section 27 of the Act when an area is notified as a sanctuary no person other than a public servant on duty, or a person permitted by the Chief Wildlife Warden or the authorized Officer to reside within the limits of the sanctuary, or a person who has any right over immoveable property within the limits of the sanctuary, and a person passing through the sanctuary along a public highway; and the dependents of the above mentioned persons shall enter or reside in the sanctuary, except under, and in accordance with, the conditions of a permit granted under Section 28 of the Act. Section 28(A) lays down as the Chief Wildlife Warden may, on application, grant, a permit to any person to enter or reside in a sanctuary for investigation or study of wildlife and purposes ancillary or incidental thereto, or for photography or for scientific research, or tourism or for transaction of lawful business with any person residing in the sanctuary. In view thereof it is clear that quarrying of sand in an area, which is notified as a Wildlife sanctuary, that too without the permission from the wildlife Warden, is not permitted. Petitioner obviously was permitted to quarry sand for the year 2002-2003, due to lack of knowledge on the part of respondents or otherwise. It is well known that there cannot be any estoppel against a statute. So the fact that petitioner was permitted to

quarry sand during 2002-2003 in a wildlife Sanctuary, contrary to the provisions of the Act, would not clothe the petitioner with a right to seek either renewal or extension of lease and no writ with a direction to contravene the provisions of a law in force can be issued. For that reason alone the petition is liable to be dismissed.

5. If the petitioner felt aggrieved by the acts of the respondents in not renewing or extending the quarrying lease and if he suffered any damages, his remedy is elsewhere.

6. Question whether petitioner in fact tendered rents as per the directions of the Division Bench decision in W.A.No.1516 of 2004 or not, may not be necessary for disposal of this Writ Petition.

7. Hence, the Writ petition is dismissed. No costs.

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02-03-2005

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To

1. The District Collector, Karimnagar District.
2. The District Panchayat Officer, ' Karimangar District.
3. The Dy. Conservator-cum-forest Officer -cum-

Divisional-Officer, Wiled Life Management,
Jinnaram, Karimnagar District.

4. 2 CCs to GP for Panchayat Raj and Rural

Development, High Court Buildings, Hyderabad. (OUT)

5. 2 CD copies.

6. 2 CCs to GP for Forests, High Court Buildings,

Hyderabad (O.U.T)